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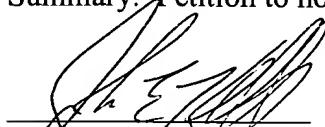
In re Application of : DECISION ON PETITION
Robert Johnson et al :
Serial No. : 09/855,403 :
Filed : May 15, 2001 :
For : Aerosol Enhancement Device :

This is a decision on a petition filed September 22, 2003 (certificate of facsimile transmission dated September 19, 2003) by which petitioner requests the establishment of a new shortened statutory period for filing a reply to the Office letter dated May 16, 2003. Petitioner alleges that he did not receive the Office letter in question. Petitioner became aware of the mailing of the May 16, 2003 letter during a review of the petitioner's docket. A call was placed to the examiner who confirmed the mailing of the letter in question and forwarded to petitioner a copy of the letter. The petition is being considered under 37 CFR 1.181, and no fee is required.

Petitioner has used the guidelines set forth in section 711.03(c) of the MPEP to establish non-receipt of Office correspondence. Although the evidentiary showing set forth therein is discussed in the context of withdrawing a holding of abandonment, that evidentiary showing is acceptable under the circumstance in the instant application in which applicant is informed of the mailing of an Office action which has not been received by applicant, even though the application has not yet been held to have become abandoned. In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The request filed September 22, includes all the above elements. The request is therefore GRANTED. Further, since the request includes a response to the Office letter of May 16, 2003, that letter will not be remailed and the response is deemed to have been timely filed. Upon the mailing of this decision, the application will be forwarded to the Examiner via the Legal Instruments Examiner for entry and consideration of the response.

Summary: Petition to hold response timely based on failure to receive Office action GRANTED.


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